

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 7: Rutheron & Plaza Blanca

Subfile No. CHRU-004-0044

**STATE OF NEW MEXICO'S RESPONSE TO MOTION
TO ALLOW CONSIDERATION OF LATE FILED RESPONSE**

The Plaintiff State of New Mexico *ex rel.* State Engineer ("State") for its response to the July 15, 2005 Motion to Allow Consideration of Late Filed Response (Doc. No. 7950) by Henry G. Coors states as follows.

The State believes Mr. Coors has failed to demonstrate excusable neglect as required by F.R.Civ.P. 6 (b). The asserted basis for excusing the late filing appears to be that Mr. Coors did not receive a copy of the June 3, 2005 Response to Motion to Set Aside Default Judgment (Doc. No. 7909) ("Defendants' Response") until sometime between June 12 and June 14, and that he required information located in Arizona in order to respond and was required to travel there to obtain it. *See* Motion to Allow Consideration of Late Filed Response ¶¶ 2 & 3. However, the Reply to Defendants' Response that Mr. Coors filed on July 11 contains no information or material that would have been unavailable to him at the time he received Defendants' Response on or about June 12. In his Reply filed July 11, Mr. Coors for the first time states that he failed to receive notice of the hearing which

resulted in a default judgment on October 11, 2004.¹ *See* Reply to the Response to the Motion to Set Aside Default Judgment (Doc. No. 7933) ¶¶ 1 & 2. Whether or not Mr. Coors received notice of the various pleadings and orders in this matter would seem to be a matter already known to him on June 12 and would not have required his travel to Arizona.

In addition, under the federal and local rules, Mr. Coors had until June 21 to file and serve a copy of his Reply on opposing counsel. *See* F.R.Civ.P. 6 (a), 6 (e) & LR-CV 7.6. Mr. Coors admits that he received a copy of Defendants' Response on or about June 12; therefore, he had over a week within which to seek an enlargement of time to respond if he believed his travel to Arizona was actually necessary. There is nothing contained in the present motion to allow the late filing that would indicate why Mr. Coors did not seek an enlargement of time prior to the expiration of the deadline. Mr. Coors was represented by counsel, a copy of the Response to the Motion to Allow Consideration of Late Filed Response was mailed to his counsel on June 3, and at any time prior to expiration of the deadline on June 21 the Court might have extended that deadline at the request of his counsel under F.R.Civ.P. 6 (b). Neither notice to other parties nor a formal motion is required by Rule 6 (b). Under these circumstances, any neglect on his part in failing to act within the prescribed time period does not appear to be excusable.

Finally, Mr. Coors' failure to timely file a Reply to the Defendants' Response has been part of a persistent failure on his part to follow the procedures, schedules and deadlines set out by the Special

¹ In making this statement it is unclear if Mr. Coors is referring to the Joint Request for Scheduling Conference filed August 31, 2004, the Amended Order Granting Request for Scheduling Conference and Setting Scheduling Conference filed September 19, 2004, or the Motion for Default Judgment filed October 11, 2004, or all of these documents. In addition, the default judgment against Mr. Coors was entered on October 28, 2005, rather than October 13 as indicated in the Reply. *See* Order Granting Default Judgment filed October 28, 2004 (Doc. No. 7626).

Master and the Court for the orderly adjudication of water rights in this stream system. In addition to his failure to attend field office sessions and to either reject or approve the State's initial proposed Consent Order delivered to him in connection with Subfile CHRU-004-0044,² Mr. Coors failed to attend the mandatory Rule 16 scheduling conference set for September 20, 2004,³ failed to respond to the State's Motion for Default Judgment filed October 11, 2004,⁴ and failed to attend the June 14, 2005 status conference as ordered by Special Master Gabin. The present disputed subfile proceedings have been significantly complicated and delayed as a direct result of these actions.

Like the Court, the State has a strong interest in bringing this long-standing water rights adjudication to a close. The staff and resources available to the State to support this effort are limited. Noncompliance with the deadlines and schedules set out by the Court, and by the local and Federal Rules of Civil Procedure, prejudices both the ability of the State to complete these proceedings, and the interests of parties who have timely participated in good faith and who have been required to wait for long periods of time until the State is able to process and evaluate their claims.

WHEREFORE, the State respectfully requests that the Court deny the Motion to Allow Consideration of Late Filed Response by Henry G. Coors and strike the Reply to the Response to the Motion to Set Aside Default Judgment by Henry G. Coors filed July 11, 2005 (Doc. No. 7933).

² See Motion for Default Judgment filed October 11, 2004 (Doc. No. 7611) ¶ 3.

³ Mr. Coors received a complete description of the proposed subject matter of the scheduling conference in the Joint Request for Scheduling Conference filed August 31, 2004 (Doc. No. 7574) a copy of which was mailed to him that same day.

⁴ A copy of the State's Motion for Default Judgment was mailed to Mr. Coors on October 13, 2004. See Certificate of Service filed October 13, 2004 (Doc. No. 7614).

Respectfully submitted,

/s/ Ed Newville

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CERTIFICATE OF SERVICE

I hereby certify that copies of the State of New Mexico's Response to Motion to Allow Consideration of Late Filed Response were mailed to the following persons on July 28, 2005.

/s/ Ed Newville

Edward G. Newville

RIO CHAMA SECTION 7 SERVICE LIST

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